Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Request to Refresh Record and Take Expedited Action to Update Copper Retirement Rules To Promote Affordable Broadband Over Copper	)))	WC Docket No. 12-353 RM-11358

COMMENTS OF CENTURYLINK

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EXECUTIVE SUMMARY

The Commission should deny US TelePacific, *et al.*'s (US TelePacific) request (Request) to abandon the Commission's successful unbundling policy for next-generation networks. Despite its innocuous-sounding caption, US TelePacific is seeking fundamental changes to the Commission's unbundling rules for next-generation networks, which explicitly and intentionally permit ILECs to retire copper loops and subloops they replace with fiber-based loops. Of course, the Commission can amend its rules only through rulemaking, and, in this case, by revisiting the broadband unbundling rules it adopted in the *Triennial Review Order*. More importantly, US TelePacific provides no legitimate justification for the Commission to do so -- particularly now, in the midst of the transition to IP networks and services.

The *Triennial Review Order*'s unbundling policies for next-generation networks continue to be valid today. Of paramount importance, these policies provide incentives for all providers to invest in next-generation broadband networks and services. Both ILEC and non-ILEC providers have invested heavily, so that residential and business customers now have vastly-improved broadband services -- generally from a wide array of providers.

This technological migration continues, as the industry moves from legacy TDM-based networks to next-generation IP networks. In the meantime, CLECs are using emerging technologies to extract improved performance from the ILECs' legacy copper facilities. This is an important development. The CLECs' provision of high-capacity services over unbundled copper loops has dramatically accelerated competition for enterprise broadband services, enabled CLECs to acquire large volumes of business customers without deploying their own transmission facilities, and exerted significant downward pricing pressure on legacy services, such as DS1s and DS3s, and newer services, such as Ethernet.

US TelePacific now seeks to guarantee CLECs indefinite access to ILEC legacy copper, suggesting that the ongoing migration to next-generation networks is somehow incompatible with competition. That is false. ILECs currently face intense facilities-based competition for their residential and business services alike. Moreover, the industry is quickly transitioning to IP services for which ILECs are essentially new entrants. Thus, in considering US TelePacific's Request, the Commission must not lose sight of its goal of facilitating investment in, and deployment of, next-generation IP networks. Contrary to this goal, the Request would dampen incentives for both ILECs *and* CLECs to deploy fiber-based facilities. For ILECs, the prospect of maintaining copper facilities indefinitely would reduce their expected return on investment for fiber overbuilds, while, for CLECs, indefinite availability of cheap copper would discourage them from deploying their own fiber, even when such deployment is economically viable.

Remarkably, US TelePacific does not even attempt to demonstrate that CLECs have been harmed by the broadband unbundling rules it seeks to modify. Just as it did in 2007, US TelePacific claims that the ILECs are poised to retire the copper loops CLECs use to provide broadband services. In fact, CenturyLink usually does not retire copper loops when it overbuilds them with fiber-based loops, and, in any case, those overbuilds generally occur in residential neighborhoods, where CLECs are unlikely to provide Ethernet-over-copper service. Even when it deploys fiber to a commercial building, CenturyLink generally maintains copper in place to serve customers being provided copper-based services. These copper loops remain available for CLEC Ethernet-over-copper services. Thus, US TelePacific can point to no imminent risk to justify the drastic change to the Commission's broadband unbundling policies that it seeks. For all these reasons, the Commission should deny US TelePacific's Request.

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COMMENTS OF CENTURYLINK

I. INTRODUCTION

CenturyLink submits these comments in response to the request of US TelePacific, *et al.* (US TelePacific), for the Commission to "refresh the record" and modify its rules regarding the replacement of copper loops or subloops with fiber-to-the-home (FTTH) or fiber-to-the-curb (FTTC) loops.[1]

Despite its innocuous-sounding caption, US TelePacific is seeking fundamental changes to the Commission's unbundling rules for next-generation networks, which explicitly permit ILECs to retire copper loops or subloops that they replace with fiber-based loops. Of course, the Commission can amend its rules only through rulemaking, and, in this case, by revisiting the broadband unbundling rules it adopted in the *Triennial Review Order*. More importantly, US TelePacific provides no legitimate justification for the Commission to revisit this highly successful policy -- particularly now, in the midst of the transition to IP networks and services.

A decade ago, the Commission established limited unbundling requirements for ILEC next-generation networks to provide the certainty needed for investment in, and deployment of,

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[1] *See Wireline Competition Bureau Seeks Comment on Request to Refresh Record and Amend the Commission's Copper Retirement* Rules, WC Docket No. 12-353, RM-11358, Public Notice, DA 13-147 (rel. Feb. 4, 2013); US TelePacific, *et al.*, Request to Refresh Record and Take Expedited Action To Update Copper Retirement Rules To Promote Affordable Broadband Over Copper (filed Jan. 25, 2013) (Request).

these networks. It worked. Over the past decade, ILECs have invested billions upon billions of dollars to extend fiber deep into their networks, bringing new, life-changing services to consumers. Competing providers have invested heavily in next-generation networks and services as well. The new rules sought by US TelePacific would destroy the certainty that enabled this broadband revolution and require ILECs to maintain redundant copper facilities indefinitely, while freezing existing infrastructure in perpetuity. Our nation cannot afford such short-sighted policy.

Remarkably, US TelePacific does not even attempt to demonstrate that CLECs have been harmed by the broadband unbundling rules US TelePacific seeks to modify. Just as CLECs did in 2007, US TelePacific claims that the ILECs are poised to retire the copper loops CLECs use to provide broadband services. In fact, CenturyLink typically does not retire copper loops when it overbuilds them with fiber-based loops, and, in any case, those overbuilds typically occur in residential neighborhoods, where CLECs are unlikely to provide Ethernet-over-copper service. Even when it deploys fiber to a commercial building, CenturyLink generally maintains copper in place to serve customers being provided copper-based services. These copper loops remain available for CLEC Ethernet-over-copper services.

For all these reasons, the Commission should deny US TelePacific's Request.

II. US TELEPACIFIC'S REQUEST FUNDAMENTALLY CONFLICTS WITH THE COMMISSION'S UNBUNDLING RULES FOR NEXT-GENERATION BROADBAND NETWORKS

In the *Triennial Review Order*, the Commission placed significant limits on the unbundling of next-generation fiber loops, in order to provide incentives for all carriers to invest in broadband facilities. As part of that ruling, the Commission declined to prohibit ILECs from retiring copper loops or subloops that they had replaced with fiber-based loops, or to "require affirmative regulatory approval prior to the retirement of any copper loop facilities."[2] At the same time, the Commission clarified that ILECs must disclose such copper retirements consistent with the Commission's network modification rules, and modified those rules to allow parties to file limited objections to the proposed retirements.[3] Now, US TelePacific asks the Commission to modify this highly-successful regulatory framework, without even addressing the relevant standards in the Act.

A. The Commission's Copper Retirement Rules Are Critical to the Commission's Pro-Investment Unbundling Policies for Next-Generation Networks

US TelePacific's request to "suspend" and "modify"[4] the Commission's copper retirement rules would thwart the key objectives of the Commission's well-established broadband policies. These rules have played, and continue to play, a critical role in promoting the Commission's pro-investment regulatory framework for next-generation broadband networks.

In the *Triennial Review Order*, the Commission eliminated most unbundling obligations for FTTH loops.[5] The Commission later extended the same unbundling relief to FTTC loops.[6]

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[2] *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17146-47 ¶ 281 (2003) (*Triennial Review Order*) (subsequent history omitted).

[3] *See Triennial Review Order*, 18 FCC Rcd at 17147 ¶ 282; 47 C.F.R. § 51.333.

[4] *See* Request at 5, 20.

[5] *See Triennial Review Order*, 18 FCC Rcd at 17143 ¶ 275.

[6] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability,* Order on Reconsideration, 19 FCC Rcd 20293 (2004) (*Fiber-to-the-Curb Unbundling Order).* A FTTC loop is a local loop that has less than 500 feet of copper. 47 C.F.R. § 51.319(a)(3)(B). In the *Section 271 Broadband Forbearance Order*, the Commission granted the BOCs forbearance

In providing this relief, the Commission found that ILECs and CLECs faced the same entry barriers and revenue opportunities in deploying FTTH and FTTC loops.[7] In the case of overbuilds, however, the Commission concluded that CLECs would be impaired if they sought only to provide "narrowband" services.[8] To address this concern, the Commission gave ILECs two options in the overbuild scenario: (1) keep the existing copper loop connected to the customer after deploying the FTTH or FTTC loop, or (2) provide unbundled access to a 64 kbps transmission path over its FTTH or FTTC loop, if the ILEC elected to retire the cooper loop.[9] As noted, the Commission specifically declined to prohibit ILECs from retiring copper loops or subloops they replaced with fiber loops, or to require regulatory approval prior to any such retirement.[10]

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relief from the requirements of section 271 for the broadband elements for which it had granted unbundling relief under section 251, including FTTH and FTTC loops. *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c); SBC Communications Inc.'s Petition for Forbearance Under 47 U.S.C. § 160(c); Qwest Communications International Inc. Petition for Forbearance Under 47 U.S.C. § 160(c); BellSouth Telecommunications, Inc., Petition for Forbearance Under 47 U.S.C. § 160(c),* Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004).

[7] *Triennial Review Order*, 18 FCC Rcd at 17143-44 ¶¶ 275-76; *Fiber-to-the-Curb Unbundling Order*, 19 FCC Rcd at 20298-99 ¶ 12.

[8] *Triennial Review Order*, 18 FCC Rcd at 17144-45 ¶ 277; *Fiber-to-the-Curb Unbundling Order*, 19 FCC Rcd at 20295-96 ¶ 6.

[9] *Triennial Review Order*, 18 FCC Rcd at 17144-45 ¶ 277; *Fiber-to-the-Curb Unbundling Order*, 19 FCC Rcd at 20295-96 ¶ 6.

[10] *Triennial Review Order*, 18 FCC Rcd at 17146-47 ¶ 281. The Commission did modify its network modification rules to permit parties to file objections to copper retirements. *Id.* Such objections are deemed denied unless acted upon within 90 days. 47 C.F.R. § 51.333. These modified network modification requirements apply "only to the retirement of copper loops and copper subloops, but not to the retirement of copper feeder plant." *Triennial Review Order*, 18 FCC Rcd at 17147 ¶ 283 n.829.

B. US TelePacific Ignores and Misconstrues the Commission's Unbundling Analysis in the *Triennial Review Order*

US TelePacific seeks rules that would allow CLECs to continue to use the ILECs' copper loops to provide broadband services indefinitely,[11] even though the Commission expressly determined that CLECs' ability to provide these services is not impaired without unbundled access to ILEC loops. It was only in the narrowband context, in which a CLEC lacked a broadband offering's revenue potential, that the Commission found some continued unbundling necessary and required ILECs overbuilding copper loops either to provide a narrowband channel on the FTTH/FTTC loop or to leave the copper in place. None of these issues are addressed by US TelePacific.

US TelePacific also ignores the Commission's goal in the *Triennial Review Order* and *Fiber-to-the-Curb Unbundling Order* of promoting appropriate investment incentives. In those orders, the Commission found that refraining from unbundling ILEC next-generation networks would stimulate facilities-based deployment in two important ways. *First*, with the certainty that these networks would remain free of unbundling requirements, ILECs would be encouraged to expand their deployment of these networks. *Second*, with that same certainty, CLECs would have incentives to seek innovative network access options to compete with ILECs.[12] By constraining the ILECs' ability to retire duplicative network plant when they deploy next-generation facilities, the Request would thwart these pro-investment policies at the heart of the Commission's unbundling policies for next-generation networks.[13]

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[11] Request at 7-11.

[12] *Triennial Review Order*, 18 FCC Rcd at 17141-42 ¶ 272.

[13] The Commission clearly lacks authority to grant the so-called "clarifications" sought by US TelePacific. All of the actions US TelePacific requests would constitute changes to the Commission's rules and therefore fall within the scope of the Commission's rulemaking procedures.

III. US TELEPACIFIC FAILS TO DEMONSTRATE ANY NEED FOR CHANGES TO THE COMMISSION'S UNBUNDLING RULES FOR NEXT-GENERATION BROADBAND NETWORKS

In 2007, CLECs (including two signatories to the Request)[14] filed two petitions for rulemaking requesting extensive changes to the Commission's copper retirement rules.[15] The petitioners urged the Commission to address the ILECs' "anticompetitive incentives to retire copper."[16] They claimed that the Commission's copper retirement rules failed to prevent copper retirements that "effectively eliminate access to unbundled network elements ('UNEs') used by competitive LECs to provide broadband service to retail consumers and to business customers," and had "resulted in the elimination of network competition, which has caused decreased broadband availability and fewer service choices."[17] Given these purportedly urgent concerns, the petitioners asserted: "Time is of the essence."

Six years later, US TelePacific is singing the same refrain -- though still off-key. None of the CLECs' dire predictions have materialized. Instead, the Commission's broadband policies have played out exactly as intended: "[W]ith the certainty that their fiber optic and packet-based networks will remain free of unbundling requirements, incumbent LECs . . . have . . . expand[ed] their deployment of these networks[.]"[18] And, "with the knowledge that incumbent LEC next-

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[14] US TelePacific and TDS also were petitioners in the BridgeCom Petition.

[15] Petition for Rulemaking and Clarifications of BridgeCom, *et al.*, *In the Matter of Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM 11358 (filed Jan. 18, 2007) (BridgeCom Petition); Petition for Rulemaking of XO, *et al.*, *In the Matter of Petition of XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. for a Rulemaking To Amend Certain Part 51 Rules Applied To Incumbent LEC Retirement of Copper Loops and Copper Subloops*, RM-11358 (filed Jan. 18, 2007) (XO Petition). By filing petitions for rulemaking, the petitioners acknowledged that their proposed changes were subject to the Commission's rulemaking procedures.

[16] BridgeCom Petition at 4.

[17] XO Petition at 1-3.

[18] *See Triennial Review Order*, 18 FCC Rcd at 17141-42 ¶ 272.

generation networks will not be available on an unbundled basis, competitive LECs [have] continue[d] to seek innovative network access options" to "fully compete" against ILECs.[19]

Nevertheless, a group of CLECs again seeks to upend the Commission's broadband unbundling policies, thus undermining the investment incentives that the Commission has successfully promoted. US TelePacific and the other signatories to the Request do so without any showing that CLECs are being harmed by the Commission's current broadband unbundling rules.

A. The Commission's Broadband Unbundling Rules Are Working as Intended

Over the past dozen years, the Commission has repeatedly exercised restraint in regulating next-generation networks and services. It has refrained from imposing blanket Title II obligations on broadband Internet services and IP voice services,[20] eliminated dominant carrier regulation of most enterprise broadband services provided by ILECs,[21] and, as noted, removed most unbundling obligations on ILEC next-generation networks.[22] The Commission took these steps, in part, to spur investment, deployment, and competition.

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[19] *See id.*

[20] *See, e.g., Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities;* Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005).

[21] *See, e.g., Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) from Application of Computer Inquiry and Certain Title II Common-Carriage Requirements; Petition of the Frontier and Citizens ILECs for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 19478 (2007); *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd 12260 (2008).

[22] *Triennial Review Order*, 18 FCC Rcd at 17142 ¶ 273.

Indeed, the Commission's regulatory restraint with respect to next-generation networks and services has been a resounding success. CenturyLink and other ILECs have steadily deployed more fiber in their networks and shortened copper loops serving residential customers. These advancements have enabled millions of consumers to get broadband service for the first time and others to experience improved broadband speeds. Thus, over time, legacy telephone networks have given way to high-speed residential broadband networks offering 10, 20 or even 40 megabits per second.[23] Cable networks sport comparable broadband speeds. These improvements have brought real and tangible benefits to American consumers.

Business customers also have benefited immensely from the Commission's pro-investment policies.[24] As CenturyLink and others have noted, new high-bandwidth consumer and business offerings are dramatically increasing demand for higher and higher capacity carriage.[25] Whereas DS1 and DS3 links top out at 1.544 Mbps and 44.736 Mbps, respectively, Frost and Sullivan reports that "[s]ervice providers are seeing increased demand for 100 Mbps

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[23] *See also Measuring Broadband America: A Report on Consumer Wireline Broadband Performance in the U.S.*, FCC Office of Engineering and Technology and Consumer and Governmental Affairs Bureau (Feb. 2013) ("ISPs also continue to upgrade their networks to provide faster and faster speed tiers. We are encouraged that we are now testing service tiers up to 75 Mbps and plan to evolve our testing program to include even higher tiers as they are rolled out by providers and adopted by consumers."), available at http://www.fcc.gov/measuring-broadband-america/2013/February.

[24] *See* National Broadband Plan at 16 ("Broadband Applications are helping businesses improve internal productivity and reach customers.").

[25] *See, e.g.*, Letter from Melissa Newman, CenturyLink, to Marlene H. Dortch, FCC, WC Docket No. 05-25, Attachment at 4 (Apr. 20, 2012) ("As the market migrates to Ethernet, TDM purchases will continue to decline."); Comments of Qwest, WC Docket No. 05-25, RM-10593, at 19 (filed Jan. 19, 2010) ("There is increasing consensus that copper-based, DSn-level special access services will be incapable of supporting backhaul requirements for this explosion of data traffic.").

and 1 GigE speeds from their wholesale customers."[26] Exploding data traffic has brought similar increases in demand from retail customers as well.

This paradigmatic shift in demand patterns has prompted a rush to deploy new next-generation Ethernet services. Total wholesale carrier Ethernet services generated revenues of about $1.3 billion in 2011, and those revenues are poised to exceed $4.2 billion by 2016, reflecting a compound annual growth rate of 26.5%.[27] Insight Research estimated revenues from Ethernet services in the United States at "over $5 billion annually" as of late 2012, and predicted them to grow to $11 billion by 2017.[28]

Telecommunications providers of all types have capitalized on this ongoing migration to Ethernet and other optical and packetized services. As the Commission recognized years ago, the marketplace for these more advanced services is competitive: "There are a myriad of providers prepared to make competitive offers to enterprise customers demanding packet-switched data services located both within and outside any given incumbent LEC's service territory," including "many competitive LECs, cable companies, systems integrators, equipment

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[26] Frost & Sullivan, *Analysis of the Wholesale Carrier Ethernet Services Market, 2012: Mobile Backhaul and Retail Market Trends Fuel Revenue Growth* 18 (2012) (*Carrier Ethernet Services Market*). *See also* Ravi Yekula & Merrion Edwards, Cyber Media (India) Ltd., *Enabling an Efficient Cloud* (Nov. 16, 2012), *available at* http://www.voicendata.com/voice-data/news/159932/enabling-efficient-cloud ("Data rates in enterprise networks and data centers worldwide have increased continuously to the point where 10Gb/s is now fairly common. Furthermore, 40 Gb/s and 100 Gb/s data rates are increasingly being adopted.").

[27] *Carrier Ethernet Services Market* at 8, 13.

[28] The Insight Research Corp., *Cable TV Enterprise Services: 2012-2017*, at 125 (Sept. 2012) (*Cable Enterprise Services*).

vendors, and value-added resellers[.]"[29] At least 30 providers now offer enterprise broadband services nationally or to large areas of the country.[30]

Notably, tw telecom is the nation's third largest Ethernet provider, ahead of CenturyLink, with strong showings by Level 3 and XO.[31] In addition, every major cable provider now competes aggressively for enterprise and wholesale customers. Cable providers are in the "ideal position to develop comprehensive carrier Ethernet architecture to support a wide range of business services," as they pass three-quarters of the nation's businesses.[32] Thus, the Commission's broadband policies of the past decade have dramatically achieved their objective of facilitating broadband deployment and competition in all telecommunications sectors.

B. US TelePacific's Proposed Changes to the Commission's Unbundling Rules Would Hinder the Transition to Fiber-Based Networks

The nation's broadband challenge is far from over, however. While significant progress has been made in expanding broadband availability and performance, much additional investment will be necessary to bring the fruits of the Commission's broadband policies to all

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[29] *See Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services et al.*, Memorandum Opinion and Order, 22 FCC Rcd 18705, 18718-19 ¶ 22 (2007).

[30] *See* CenturyLink Petition for Forbearance, WC Docket No. 12-60, at Attachment E (filed Feb. 23, 2012).

[31] *Vertical Systems Group: 2012 U.S. Business Ethernet Leaderboard* (Jan. 29, 2013), available at http://www.verticalsystems.com/prarticles/stat-flash-YE_2012_US_Leaderboard.html (*Ethernet Leaderboard).*

[32] *Cable Enterprise Services* at 88, 105. By 2011, Comcast, Time Warner Cable, and Cox had each achieved more than $1 billion in annual "commercial services" revenues, with steady growth predicted in upcoming years. *Id.* at 26, 115. Indeed, in 2012, Comcast's business service revenues climbed 34% to 2.4 billion. *See* Comcast News Release, *Comcast Reports 4th Quarter and Year End 2012 Results* (Feb. 12, 2013), available at http://www.cmcsk.com/releasedetail.cfm?ReleaseID=739834.

Americans.[33] Further progress will require ILECs to extend fiber deeper into their networks, which will enable the convergence of multiple IP-based services -- including voice, data and video.[34] Even for business customers, fiber is far from ubiquitous. According to US TelePacific, more than two-thirds of U.S. commercial buildings are not connected to fiber networks.[35]

Given these challenges, the Commission must continue to maintain broadband policies that encourage providers to invest in their networks. Regulatory certainty is as important as ever. As CenturyLink recently explained, the transition to next-generation IP networks is particularly costly for ILECs like CenturyLink that serve expansive, mostly rural areas.[36] Fifteen years of competition -- from cable, wireless and CLEC competitors -- along with the rise of email, texting, instant messaging, social media and other alternatives to voice services, has steadily eroded ILECs' base of wireline customers. Thus, carriers such as CenturyLink face a vastly diminished, and still-declining, customer base over which to spread the massive costs of migrating to next-generation IP networks. Particularly in rural areas, potentially without federal high-cost support, a near-term business case for a transition to a next-generation IP network is often difficult to justify.

Under the right conditions, a transition to fiber-based loops can be justified, based on the prospect of increased revenues *and* maintenance savings associated with a next-generation IP network. Such maintenance savings would be far from certain, however, if ILECs could be

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[33] National Broadband Plan at 29 ("The U.S. must lead the world in broadband innovation and investment and take all appropriate steps to ensure all Americans have access to modern, high-performance broadband and the benefits it enables.").

[34] *See* National Broadband Plan at 59.

[35] *See* Request at 3 (asserting that approximately 68% of buildings with 20 or more employees are not connected to fiber networks).

[36] *See* Reply Comments of CenturyLink, GN Docket No. 12-353, at 4 (filed Feb. 25, 2013) (CenturyLink IP-Transition Reply Comments).

required to maintain their copper infrastructure indefinitely. Thus, US TelePacific's proposed rule changes could neutralize one of the main drivers in the migration to next-generation IP networks.[37]

Changes to the copper retirement rules could have a similar impact for business customers, by undermining incentives for ILECs and CLECs to deploy fiber facilities. As discussed in the Request, many CLECs have competed very effectively using Ethernet-over-copper technologies to provide broadband speeds of up to 50 Mbps or even higher. Nevertheless, there are limits on what can be provided over copper plant (though those limits are continually increasing). A fiber loop will always be able to support faster speeds than a copper loop. For the highest speeds (*e.g.*, 1 Gbps or higher) -- which are increasingly requested -- fiber currently may be the only option.

Disturbingly, US TelePacific's proposed rules would dampen both ILECs' and CLECs' incentive to deploy these critical fiber facilities. If the Commission adopted US TelePacific's proposed rule changes, an ILEC potentially would bear the cost of both deploying a fiber facility *and* indefinitely maintaining the copper facility that it replaced. US TelePacific's rule changes thus would trigger the concerns identified in the National Broadband Plan about ill-conceived legacy regulation interfering with the TDM-to-IP transition: Such regulation "is not sustainable," could "lead to investments in assets that could be stranded," and would "siphon[] investments away from new networks and services."[38] At the same time, these rule changes

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[37] *See* CenturyLink IP-Transition Reply Comments at 5-6.

[38] *See* National Broadband Plan at 59. The Request also raises complicated issues regarding the pricing of copper loops maintained solely for the benefit of CLECs. The Commission's TELRIC methodology assumes a ubiquitous network, such that feeder and other common loop-related costs will be shared by the ILEC's retail customers, as well as CLECs purchasing UNE loops. *See Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers*, Notice of Proposed

could dramatically increase a CLEC's incentive to remain on copper technology -- because it is cheap -- even if the CLEC can achieve revenues that would justify its own fiber deployment.

In short, US TelePacific's proposal threatens to gut the Commission's key objective of "promot[ing] investment in, and deployment of, next-generation networks" by maintaining certainty and creating proper incentives for all broadband providers.[39] Without continuing investment in next-generation networks, telecommunications providers will be unable to keep up with consumers' skyrocketing demand for bandwidth-hungry applications and services.

C. US TelePacific has Not Shown that CLECs Are Being Harmed by the Commission's Current Copper Retirement Rules

US TelePacific also has failed to justify the far-reaching actions it seeks. It points to no instances of CLECs being forced off an ILEC's copper facility or of a "customer los[ing] the affordable broadband it receives from its chosen provider[.]"[40] Instead, US TelePacific recites the unfounded fears raised in CLEC petitions six years ago.

These concerns are overblown for three primary reasons.

First, to the extent copper is being retired, or will be retired, that is occurring primarily in residential areas, where CLECs typically do not provide Ethernet-over-copper services.[41]

Rulemaking, 18 FCC Rcd 18945, 18964 ¶ 49 (2003). But if the ILEC's retail customers have been moved to fiber-based loops, that sharing assumption would be invalid and the UNE loop rate would have to be modified accordingly.

[39] *Triennial Review Order*, 18 FCC Rcd at 17141-42 ¶ 272. The proposed rules also would put ILECs at a competitive disadvantage, because they would not apply to cable and other non-ILEC providers.

[40] Request at 1.

[41] Indeed, it appears that two of the signatories on the Request do not offer any services to residential customers. US TelePacific website, available at http://www.telepacific.com/offer/telecom-solutions.asp ("Whether your business is small, midsized or large, or operates in one or multiple locations, we have the network infrastructure, technology and expertise to customize communications solutions that support your organization's unique business needs and goals"); Level 3 website, available at

Second, even in those areas, CenturyLink generally does not retire copper after it upgrades its outside plant. When CenturyLink installs fiber-to-the-node infrastructure in a neighborhood,[42] it usually leaves existing customers on the copper plant until they order a higher-capacity broadband service that cannot be provided over that infrastructure. To do otherwise would be cost prohibitive, given increasingly low margins for consumer broadband services.

To date, most of CenturyLink's copper retirement has occurred in instances where network modifications are necessary to maintain or provide service, such as part of a road construction project or when the copper loop is too long to support broadband service. In these situations, CenturyLink frequently takes the opportunity to upgrade the affected outside plant and drive fiber and electronics deeper into the network.[43] Amazingly, US TelePacific appears to suggest that, even in these circumstances, an ILEC should be required to rebuild the copper plant (that it has no intention of using).[44]

A Commission rule requiring ILECs to maintain copper facilities indefinitely in such situations would likely tip many of these investment decisions away from upgrading the network and deprive the affected customers of broadband services that only can be provided over fiber-based loops. It is unlikely that CenturyLink could achieve a positive return on investment for the

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http://www.level3.com/en/about-us/company-information/company-history/ (Level 3 has "won the trust of the world's most sophisticated communications companies."). TDS' MetroEthernet offering is listed as a "business solution." TDS website, available at http://www.tdsbusiness.com/products/data-networking/ethernet.aspx.

[42] Most frequently, CenturyLink used fiber-to-the-node configurations, rather than FTTH or FTTC, to provide faster broadband speeds to consumers.

[43] If the network modification is precipitated by a government project (such as road construction), CenturyLink carefully tracks expenses for the project to ensure that it is reimbursed only for a "like-for-like" facility move.

[44] *See* Request at 11 (criticizing Verizon's apparent decision not to replace copper destroyed by Superstorm Sandy).

cost of constructing fiber, placing electronics and migrating customers, if the company also had to bear the cost of replacing and maintaining (redundant) copper facilities.

On the business side, CenturyLink also currently does not routinely retire copper plant. It generally deploys fiber to a commercial building only on a "success basis" -- in other words, when it wins a customer commitment that justifies fiber deployment.[45] Even then, CenturyLink typically leaves the existing copper in place for other customers in the building, because migrating those customers to fiber would require CenturyLink to deploy different equipment in the building. In addition, the Ethernet services that CenturyLink provides over fiber do not support POTS services that customers in the building may be receiving.

Third, US TelePacific does not even attempt to show that its request meets the section 251(d)(2) impairment standard. As noted, the Commission found in the *Triennial Review Order* that ILECs are in no better position to deploy fiber loops than CLECs, because they "face the same obstacles" in deploying these facilities: "Both competitive LECs and incumbent LECs must obtain materials, hire the necessary labor force, and construct the fiber transmission facilities."[46] And CLECs and ILECs enjoy the same revenue opportunities from the many services that can be provided over a next-generation network.[47] It was only for narrowband services, which are not relevant here, that the Commission established additional safeguards

[45] With regard to fiber, an ILEC stands in the same shoes as a CLEC or any other competitor: it can economically justify deployment of fiber to a building only if its expected revenues in the building will exceed its expected costs.

[46] *Triennial Review Order*, 18 FCC Rcd at 17144 ¶ 276.

[47] *Id.*

regarding ILECs' copper retirements. Tellingly, US TelePacific does not address this key reasoning at the heart of the Commission's copper retirement rules that it seeks to change.[48]

IV. CONCLUSION

US TelePacific's Request asks for unwarranted changes to the Commission's longstanding broadband policies. For more than a decade, the Commission has maintained policies that provide incentives for all providers to invest in and deploy next-generation networks. US TelePacific's Request would disturb this delicate balance by requiring ILECs to maintain redundant copper facilities indefinitely, thereby preventing them from realizing the cost savings that are a key driver of the deployment of, and migration to, next-generation networks. US TelePacific's Request does not come close to demonstrating a need for the far-reaching rules it seeks. For all these reasons, as well as those discussed above, the Commission should deny the US TelePacific Request.

Respectfully submitted,

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[48] Also, if a portion of a copper loop is being retired, CLECs may be able to serve customers through sub loop unbundling. *See Triennial Review Order*, 18 FCC Rcd at 17151 ¶ 291 ("we determine that unbundled access to incumbent LEC copper subloops adequately addresses the impairment competitive LECs face so that intrusive unbundling requirements on incumbent LEC packetized fiber loops facilities is not necessary.").